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Regulatory
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Proposed Regulation Agency Background Document

Agency name	State Council of Higher Education for Virginia
Virginia Administrative Code (VAC) citation	8 VAC 40 -31
Regulation title	Regulations Governing the Certification of Certain Institutions to Confer Degrees, Diplomas and Certificates
Action title	Provides rules and instructions for postsecondary schools to obtain a Certificate to Operate in Virginia; replace emergency regulations of the same number
Document preparation date	November 21, 2005

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

Enter statement here

These regulations will be the primary document that the State Council of Higher Education for Virginia uses to administer the certification of private and out-of-state postsecondary schools. The regulations define terms unique to school certification; identify the regulated community, exempted schools and exempted degrees; establish certification criteria and procedures for application and appeal; and impose fees. These regulations supplant the previous process of approval that covered only institutions of higher education in 8 VAC 40-30 and includes regulatory oversight of career-technical schools. These regulations will replace emergency regulations, 8 VAC 40-31.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Enter statement here

The State Council of Higher Education for Virginia is granted explicit authority to promulgate regulations necessary to implement the provisions of § 23-276.3 of the Code of Virginia which states: "The State Council of Higher Education for Virginia shall adopt, pursuant to the Administrative Process Act (§ [2.2-4000](#) et seq.) such regulations as may be necessary to implement the provisions of this chapter. The Council's regulations shall include, but need not be limited to, (i) procedures by which a school may apply for Council approval to confer degrees in Virginia; (ii) measures designed to ensure that all postsecondary schools that are subject to the provisions of this chapter meet minimal academic standards; (iii) protections for students pursuing postsecondary education opportunities in schools subject to the provisions of this chapter; and (iv) information to assist persons who rely on postsecondary degrees, diplomas, and certificates in judging the competence of individuals."

Also, Chapter 991 of the 2004 Acts of Assembly was enacted on July 1, 2004. The Chapter repealed the authority of the Virginia Board of Education regulate proprietary schools and granted it to the State Council of Higher Education for Virginia.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

Enter statement here

This regulation is needed to replace emergency regulations of the same number, which was a result of legislation passed by the 2004 General Assembly. It provides the State Council of Higher Education for Virginia with regulatory oversight for institutions of higher education and career-technical schools and provides standards of operations for both school sectors. The goal of this regulation is to provide clear and concise guidelines for the regulated communities, including those career-technical schools previously regulated by the Board of Education. All postsecondary schools seeking to operate in Virginia require Council certification. This regulations will be the primary document the Council uses to administer the certification process.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

Enter statement here

These regulations will replace the previous regulations (8 VAC 40-31), used by the State Council of Higher Education for Virginia regulating institutions of higher education. These regulations will also replace 8 VAC 20-350, used by the Board of Education to regulate proprietary schools. In essences, the new regulations will offer a single source of regulations for institutions of higher education and career-technical schools, with oversight by the State Council of Higher Education for Virginia, as required by Chapter 991 of the 2004 Acts of Assembly.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

Enter statement here

This regulation will provide postsecondary schools with a set of specific and clearly defined criteria to confer degrees, degree credit, certificates and diplomas in the Commonwealth of Virginia. Virginia students will benefit from the increased protection of their loans and cash payments. School will be required to provide surety for all student payments via loan or cash where classroom instruction has not been delivered. The Council staff will conduct random and trigger audits of schools to ensure adherence to standards established in the regulations.

The regulations include a requirement that career technical schools submit an increased administrative fee than they paid to the Board of Education. While this annual certification renewal fee is increased, it eliminates a number of individual fees the schools were charged for certain actions taken throughout the year, such a change of location (\$100), addition of programs (\$100), program deletion (\$50), addition of branch campus (\$100), revised program review and approval/program name change (\$50), extension classroom/additional space approval (\$50), and catalog review (\$50). The use of the surety instrument also eliminates the previous requirement of career technical schools making an annual payment to the Student Tuition Guaranty Fund.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>Implementation of this regulation will have no projected cost to the state, as funding for activities related to these schools is from non-general funds. The administration of these regulations are funded through the school certification fees.</p>
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<p>Projected cost of the regulation on localities</p>	<p>\$0</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>All regulated private and out-of-state postsecondary school</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>475</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>Initial certification fee for new institutions of higher education - \$6,000 Initial certification fee for new career technical schools - \$2,500</p> <p>Annual fee for unaccredited institutions of higher education - \$6,000 Annual fee for unaccredited out-of-state career technical schools - \$2,500</p> <p>Renewal fee for all postsecondary schools with gross tuition collected greater than \$150,000 - \$2,500 Renewal fee for all postsecondary schools with gross tuition collected greater than \$100,000 but less than or equal to \$150,000 - \$1,500 Renewal fee for all postsecondary schools with gross tuition collected greater than \$50,000 but less than or equal to \$100,000 - \$1,000 Renewal fee for all postsecondary schools with gross tuition collected less than or equal to \$50,000 - \$500.</p> <p>Late fee - \$100 per day for 10 business days after expiration of Certificate to Operate, maximum of \$1,000.</p> <p>Returned check fee - \$35</p> <p>Non-compliance administrative fee - \$1,000 for each occurrence of non-compliance found as a result of an audit</p> <p>Initial or renewed exemption application - \$300</p> <p>Request for name acknowledgement - \$300</p> <p>Agent registration - \$300 per agent, per school represented</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Enter statement here

This new regulations will combine the certification requirements for institutions of higher education and career-technical schools to one comprehensive source. Due to the extensive, but necessary changes, the current regulations governing certification for these two sectors will be repealed and this new regulations is being promulgated. It is also a replacement for the emergency regulations, which was mandated by legislations passed by the 2004 General Assembly. The new regulation is the least intrusive and least burdensome alternative available to ensure students rights are protected. SCHEV consulted with representatives from the various sectors through meetings and other contacts to develop these regulations.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

Enter statement here

The regulations will have not impact on the institution of the family and family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart: **Changes affecting career-technical schools**

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
8 VAC 20-350-10	8 VAC 40-31-10	This section includes definitions of words and terms used in the regulations.	The proposed change adds definitions for the following words and terms: accreditation, adjunct faculty, administrative capability, career-technical school, certification, change of ownership, CIP code number, clock (contact) hour, college, Council, course for degree credit, course registration materials, credit, credit hour, degree, degree program, diploma or certificate, existing institution or existing postsecondary school, full-time faculty, in-state institution, institution of higher education or institution, instructional faculty, multistate compact, noncollege degree school, new institution or new postsecondary school, out-of-state institution, part-time faculty, postsecondary education, postsecondary education activities, postsecondary school, program area, program of study, site, surety instrument, telecommunication activity, unearned tuition, university.
*	8 VAC 40-31-20	*	The proposed change adds specific prohibited acts such as the bartering, selling or exchanging for any consideration of a degree, degree credit, diploma or certificate; the use of a fraudulently issued, obtained, forged or materially altered degree; use of "college" or "university" in school name without Council written approval; use of a school name which has the potential to mislead the general public about the school's affiliation or association.
8 VAC 20-350-310	8 VAC 40-31-30	This section provides guidelines for advertising and publications.	The proposed change eliminates all reference to the Board of Education and Superintendent. Requires that an out-of-state school with a presence in Virginia must state in its course registration material that each course, degree, diploma or certificate offered at the Virginia school is approved by the governing body of the school and by the appropriate state agency, if any. Any credit earned at the school in Virginia must be transferable to the principal location of the school outside of Virginia.
*	8 VAC 40-31-40	*	This new section exempts state supported institutions of higher education and is not

			relevant to the Board of Education rules for career technical schools.
8 VAC 20-350-20	8 VAC 40-31-50	Schools offering exclusively religious instruction are exempt.	Proprietary schools offering exclusively religious instruction continue to be exempted by the regulations, however the new regulations state that exemptions granted after July 1, 2002 are valid for only 5 years at which time the school must apply to continue the exemption on forms provided by the State Council. The new regulations also require that the school award only religious degrees. The new regulations require that the school state plainly in its publications that the school's primary purpose is religious and that the school is exempt from certification.
8 VAC 20-350-20	8 VAC 40-31-60	The current section provides 10 exemptions from regulations.	The new regulations do not include the old exemption for courses not exceeding 16 hours or for those not exceeding 40 hours when offered as an adjunct to another primary business or service. The new regulations exempt nursing education programs (the old ones did not) but only to the extent that the Board of Nursing regulates the program. The new regulations add an exemption for any school that is subject to approval by a regulatory board pursuant to Title 54.1 of the Code of Virginia or is subject to approval by any state or federal agency. The new regulations add an exemption for a program of study given by or approved by any professional body, fraternal organization, civic club, or benevolent order for professional education or advancement. The new regulations continue the exemption for schools conducted on a contractual basis with no open enrollment or individuals charged for tuition, but it adds the requirement that the school be accredited.
8 VAC 20-350-580	8 VAC 40-31-70	The current regulation says that all actions in regard to denials, revocations, suspensions, and refusals must be done in accordance with the	The new section specifies that denial of an exemption must follow the procedures of 8 VAC 40-31-220 which sets procedural rules per the Administrative Process Act.

		Administrative Process Act.	
N/A	8 VAC 40-31-80	The current regulations do not specify roles of the State Council of Higher Education.	The new section allows council to establish fees for services and methods for collecting the fees. The council may delegate authority to administer §§ 23-276.1 et seq. to the Executive Director. The council must adopt certification criteria for the operation of postsecondary schools in Virginia. Only the council may refuse, revoke or suspend certification and must ensure due process in accordance with the Administrative process act.
	8 VAC 40-31-90	The current regulations do not specify roles of the Executive Director of the State Council of Higher Education.	The executive director has the following responsibilities: (1) authorize certification for schools meeting the criteria, (2) authorize the use of “college” or “university” in a school’s name, (3) authorize religious exemptions, (4) authorize emergency action (including suspending new enrollment, requiring a guaranty instrument or increased penalty, or other actions) when an adverse action by the USDE or and accreditor threatens disruption of operation, (5) assess administrative fees, (6) authorize release of a surety instrument, and (7) delegate administrative responsibilities to council staff.
	8 VAC 40-31-100	The current regulations do not specify the roles of the staff of the State Council of Higher Education.	The role of council staff is: (1) oversight and administration for purposes of compliance with §§ 23-276.1 et seq of the Code of Virginia, (2) review initial and annual certification requirements for all schools, (3) perform audits, (4) investigate all noncertified schools in Virginia, (5) monitor accreditation activities of nonaccredited schools in Virginia, (6) investigate all written and signed complaints or adverse publicity or any situation that may adversely affect students or consumers, (7) share with state or federal agencies or accreditors information regarding the operation or closure of postsecondary schools operating in Virginia, (8) other responsibilities delegated by the executive director.
*	8 VAC 40-31-110	*	The new section continues certain exemptions for institutions of higher education, and thus is not applicable to those schools previously regulated by the Board of Education.
8 VAC 20-350-320, 80, 520	8 VAC 40-31-120	The current sections do not specify that a school is not exempt just because credit is transferred out of state. The current sections do	The new section says that schools are not exempt from regulation just because the credit for coursework is transferred out of state. All new postsecondary schools must become certified prior to operating either by telecommunications, mail, or at a site within

		not set out requirements for certification when partnering with another school in the state. The other regulations are continued without modification.	the state. Correspondence and telecommunications courses must meet same requirements as all other correspondence schools. Existing schools must recertify annually. Each branch must certify separately. A school must be certified before partnering with another school in the state.
8 VAC 20-350-130	8 VAC 40-31-130	The current section requires applicants to commit to conducting the school in accordance with the applicable regulations.	The new section says that certification criteria will include procedures for application for certification and criteria for ensuring all postsecondary schools meet minimal academic or vocational standards. The CEO is responsible for certifying total compliance with all of the certification criteria on an initial and annual basis.
N/A	8 VAC 40-31-140	The current regulations do not cover degree granting institutions.	This section sets out certification criteria for institutions of higher education and is not relevant to those schools formerly regulated by the Board of Education.
8 VAC 20-350-150, 210	8 VAC 40-31-150	The current sections require that instructors have either (1) an accredited degree in the area of teaching or a related field, or (2) be a graduate of a certified proprietary school in the area of teaching and have two years of experience in the area of teaching, or (3) have four years of experience in the area of teaching. The courses must meet recognized standards in the field.	Instructor requirements are reduced to only an associate degree in the area of teaching or two years of experience in the area of teaching. The courses must still meet recognized standards.
8 VAC 20-350-230, 240, 250, 260	8 VAC 40-31-160	These sections detail requirements for student records, enrollment agreements, record maintenance, and refund policies.	The new section requires: <ol style="list-style-type: none"> 1. a comprehensive written statement 2. a document stating the powers, duties and responsibilities of the board, officers, administrators, and students 3. a policy document setting forth the requirements for admission 4. records to be kept on all students 5. a school catalog or brochure 6. a process to establish, review and evaluate curriculum 7. records showing financial stability 8. a surety instrument 9. a written policy on faculty accessibility 10. current and accurate information is provided to students 11. that programs offered by

			<p>telecommunications are comparable to those in person</p> <ol style="list-style-type: none"> 12. a library 13. a tuition refund policy 14.
N/A	8 VAC 40-31-170	There is no corresponding section in the current regulations.	The new section prohibits using the term college or university in a school name until approved by SCHEV. A school may not operate without certification. Schools must complete the application process within 180 days. Certification is not transferable upon a change of ownership. SCHEV will process applications within 45 days.
8 VAC 20-350-120	8 VAC 40-31-180	<p>The current section sets forth the requirements for an application:</p> <ol style="list-style-type: none"> 1. the name of the school, names of owners, and evidence of compliance with regulations of the SCC 2. program outlines 3. a floor plan 4. a certificate of occupancy 5. a copy of the lease or deed 6. a listing of equipment and books 7. the maximum enrollment and student to teacher ration 8. a listing of teacher and administrator qualifications 9. financial statements 10. a copy of the student enrollment agreement, schedule of tuition and fees, copies of other forms used to keep student records, and a procedure for collecting and refunding tuition 11. copies of all 	<p>The new section sets forth the requirements for an application:</p> <ol style="list-style-type: none"> 1. a completed application form 2. a statement regarding accreditation 3. a transacted surety instrument 4. a checklist acknowledging compliance with certification criteria 5. payment for fees 6. a copy of the SCC certificate to transact business in Virginia 7. for out of state schools, a copy of the authorization to operate from the school's home state 8. listing of all sites and classes taught 9. a statement attesting to all previous involvement with other postsecondary schools 10. a listing of all programs, annual enrollment projections, and job placement information. 11. a valid business license

		<p>advertising</p> <p>12. evidence of compliance with STGF and guaranty instrument requirements.</p>	
N/A	8 VAC 40-31-190	The current regulations do not allow withdrawal of an application.	The new section allows a school to withdraw an application at any time without prejudice, but all authorizations associated with the application will be revoked. A school may at any time submit a new application. SCHEV will refund the application fee minus a handling charge when an application is withdrawn.
N/A	8 VAC 40-31-200	The current regulations do not mention audits.	The new section makes all postsecondary schools subject to random periodic audits. The section says that audit staff shall consist of the executive director or designee and may include individuals with relevant experience and council staff. Audits may also be triggered by staff concerns regarding application information, student complaints, difficulty securing accreditation, adverse action by the U.S. Department of Education or an accreditor, or a USDE composite financial responsibility score of less than 1. The council staff must prepare a report with recommendations for council. Council may take no action and file the report, place the school on probation and require remedial action, or revoke or suspend certification.
N/A	8 VAC 40-31-210	The current Board of Education regulations do not have a corresponding section.	This new section says that the council is not to consider duplication of effort by public or private schools or the need for the program when considering a school's application.
8 VAC 20-350-560, 580	8 VAC 40-31-220	The current sections specify only that the Administrative Process Act is to be followed. The current section allows for a 5-person arbitration committee and for informal hearings.	The new section sets for procedural rules of fact finding conferences and hearings including notice, appearance, conduct, location, decisions, and agency representation.
8 VAC 20-350-90	8 VAC 40-31-230	The current section makes operation without certification a class-2 misdemeanor and makes each day of operation without certification a separate offense.	The new section makes the offering of degrees, etc. without certification a class-1 misdemeanor where each degree, etc. is a separate offense. The council may take any action required by code to deter illegal acts violating the certification requirements.
8 VAC 20-350-100	8 VAC 40-31-240	The current section says that violations of regulations must be	The new section allows council to institute an equity proceeding to enjoin known violations of regulations.

		referred to the Attorney General or local Commonwealth's Attorney.	
N/A	8 VAC 40-31-250	There is no choice of law section in the current regulations.	The new section makes Virginia law applicable to contracts between postsecondary schools and its employees and students.
8 VAC 20-350-510	8 VAC 40-31-260	The current section lists all fees for vocational schools (See comparison with Schedule A below.) Fees will be deposited in the State Treasury. All fees are nonrefundable except when an application is withdrawn, in which case a \$300 handling fee is charged. Fees must be paid with a company check payable to the Treasurer of Virginia.	The new section says that fees are listed in Schedule A. Fees will be deposited in the State Treasury. All fees are nonrefundable except when an application is withdrawn, in which case a \$300 handling fee is charged. Fees must be paid with a company check payable to the Treasurer of Virginia. The new section does not include fees for students with disabilities because SCHEV does not regulate those schools.
8 VAC 20-350-650	8 VAC 40-31-270	The current section requires says that mailing of materials does not constitute receipt of them by the Board unless sent by registered mail, certified mail, express mail, or courier with return receipt requested. The mailing address for the board is given. Electronically submitted materials are accepted contingent on receipt of originals by mail as above.	The new section repeats the receipt requirements. The mailing address is changed to the SCHEV office. No mention is made of electronic submission of materials.
8 VAC 20-350-640	8 VAC 40-31-280	The current section requires schools to notify students of the closing and to make arrangements for students to complete the program or give them refunds. The school must also notify the Board of Education of the closing date and must give the board a class roster and a copy of student's academic attendance and financial	The new section allows council to authorize a school whose application for certification is denied to continue to offer instruction to all current enrollees until the end of the current academic term. The council may authorize a school whose certification is revoked to offer coursework so that students may complete their program provided that they only offer coursework to those students enrolled at the time of revocation and students can finish in a reasonable time. When a school voluntarily closes it must notify council of the planned termination date, date and location of student record transfers, the name of the organization maintaining student records,

		<p>payment records and a copy of the enrollment agreement. The school must also submit a detailed closure plan to the board. The section required schools to transfer original or certified true copies of the records to the Board.</p>	<p>arrangements for continued education of currently enrolled students, and class rosters with name, address and academic status. Council may facilitate record transfer when a school closes. Council is responsible for securing and preserving records until the designated depository accepts them. Council shall seek advice of the Career Council Advisory Board on matters relating to school closures.</p>
8 VAC 20-350-190	8 VAC 40-31-290	<p>The current requirement allows the Board to make an exception of any of the requirements in sections 10 through 180 for good cause.</p>	<p>The new section allows the council to waive or modify certification requirements for accredited schools when it will not conflict with the regulatory goals and when those requirements create an unreasonable hardship on the school.</p>
N/A	8 VAC 40-31-300	<p>There is no corresponding section dealing with the Freedom of Information Act.</p>	<p>The new section says that all materials submitted in support of an application or at the request of council are available for public inspection per the Freedom of Information Act.</p>
8 VAC 20-350-490	8 VAC 40-31-310	<p>The current section creates the STGF for the purpose of reimbursing students at schools that close. The minimum operating balance is set at \$250,000. All certified schools must pay into the fund an amount dependent on gross tuition receipts. Existing schools paying into the fund need not have a guaranty instrument. Certificates to operate expire automatically if a school fails to pay into the STGF. The board must appoint an advisory committee for the fund to make recommendations to the board. The supervisor may appoint a director of the fund from his staff to administer the fund. The director controls how, whether and when disbursements are made. The section sets forth factors to consider when deciding how much to pay a claimant to the fund. The section sets forth requirements</p>	<p>The executive director must appoint a director of the STGF. Schools are no longer required to pay into the STGF. All other provisions for administration are continued in the new section.</p>

		for timeliness of claims. The section says that director's determinations shall be in writing and can be appealed by a claimant in a hearing.	
8 VAC 20-350-610, 620, 630	8 VAC 40-31-320	The current sections require all agents of all schools to apply for a permit if they are soliciting or enrolling students off of the premises (an exemption is made for career or college day programs). Agents must carry a state issued agent ID card. Agents must provide 3 character references. The sections provide for suspending or revoking an agent's permit for bad conduct.	The new section requires registration only for agents of non-certified accredited schools. Agents of non-certified, non-accredited schools may not conduct business in Virginia. Agents operating sites in Virginia must seek council certification. The fee is \$300 for each registrant for each school represented. The new section does not require character references or provide for suspension or revocation of an agent's registration.
8 VAC 20-350-510	8 VAC 40-31 Schedule A	The current section specifies the following fees: <ol style="list-style-type: none"> 1. Original Certificate to operate: \$300 2. Renewal of Certificate: \$150 plus .1% of gross tuition. 3. Reissue of Certificate <ol style="list-style-type: none"> a. change of location: \$100 b. addition of programs: \$100 c. program deletions: \$50 d. addition of branch: \$100 4. review of out of state school for agent permit: \$100 5. original agent 	The new section sets the following fees: <ol style="list-style-type: none"> 1. initial fee for new institutions of higher education: \$6000 2. initial fee for new career schools: \$2500 3. annual fee for unaccredited institutions of higher education: \$6000 4. annual fee for accredited institutions of higher education: \$2500 5. Renewal fee for career school with gross tuition above \$150,000: \$2500 6. Renewal fee for career school with gross tuition above \$100,000 but under \$150,000: \$1500 7. Renewal fee for career school with gross tuition above \$50,000 but under \$100,000: \$1000 8. Renewal fee for career school with gross tuition under \$50,000: \$500 9. late fee: \$100 a day for up to 10 days (\$1000 max) 10. audit noncompliance fees: \$1000 per occurrence 11. initial or renewed exemption application/request for name acknowledgement/agent registration: \$300 12. handling charge for withdrawn application: \$300.

		permit: \$50 6. renewal of agent permit: \$25 7. revised program review and approval/program name change: \$50 8. additional space approval: \$50 9. requested catalog review: \$50 10. late penalty for application: \$100 11. search and issue student transcript: \$5 12.	
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For changes to existing regulations, use this chart: **Changes affecting institutions of higher education**

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
8 VAC 40-31-10	8 VAC 40-31-10	This section includes definitions of words and terms used in the regulations.	The proposed change adds definitions for the following words and terms: accreditation, agent, career-technical school, change of ownership, clock (contact) hour, course registration materials, credit hour, existing institution or existing postsecondary school, gross tuition collected, noncollege degree school, new institution or new postsecondary school, out-of-state institution, postsecondary education activities, teach-out agreement, unearned tuition.
8 VAC 40-31-60	8 VAC 40-31-60	This section describes the types of Institutions, programs, degrees, diplomas and certificates that are exempt from Council action.	<p>Eliminates the exemption of proprietary school and other postsecondary non-degree granting institutions.</p> <p>Eliminates the requirement that a proprietary school that is licensed by the Board of Education and seeks Council certification shall continue to comply with the provisions of Chapter 16 (§ 22.1-319 et seq) of Title 22.1 of the Code of Virginia.</p> <p>Eliminates the exemption for postsecondary</p>

			<p>courses or programs offered by an institution of higher education at a U.S. military base.</p> <p>Add an exemption for programs of professional or occupational training offered by a school to the extent that the program is subject to approval by any other state or federal agency and that the school is not seeking degree-granting status such that they would be required to obtain Council certification.</p> <p>Eliminates the exemption for certificates or diplomas awarded on the basis of Continuing Education Unit (CEU) credit or equivalent.</p> <p>Adds an exemption for courses offered and delivered by an accredited postsecondary school, recognized by the U.S. Department of Education, if such courses are provided solely on a contractual basis for which no individual is charged tuition and for which there is no advertising for open enrollment.</p> <p>Add an exemption for programs of instruction offered through any public or private high school accredited or recognized by the Board of Education.</p> <p>Adds an exemption for instruction designed to supplement regular classes for student enrolled in public or private high school or to prepare individuals for an examination for professional practice or high education.</p> <p>Adds an exemption for school of fine arts or other avocational courses conducted solely to further artistic appreciation, talent or for person development or information.</p>
8 VAC 40-31-120	8 VAC 40-31-120	This section details certification requirements for new and existing Institutions of Higher Education	In addition to renaming the section title to "Certification required for new and existing postsecondary schools", this section adds the requirement that any postsecondary school, not previously certified to operate in Virginia, seeking to establish a postsecondary education consortium, agreement, partnership or other similar arrangement with an existing postsecondary school must become certified to operate prior to engaging in postsecondary education activities within Virginia.
8 VAC 40-31-140	8 VAC 40-31-140	This section details certification requirement for Institution of Higher	The percentage of general education courses required of a terminal occupational/technical program leading to the Associate of

		Education.	Occupational Science (A.O.S.) was increased from 10% to 15%. These regulations require that all instructional staff, regardless of the level of instruction, hold a degree from an accredited college or university
*	8 VAC 40-31-150	*	This section provides certification criteria specific for career-technical schools, which have no effect on institutions of higher education
8 VAC 40-31-140	8 VAC 40-31-160	This section details certification requirement for Institution of Higher Education.	<p>The proposed change includes certification requirements for both institutions of higher education and career-technical schools.</p> <p>This section adds that all postsecondary schools must have a clear, accurate, and comprehensive written statement that minimally includes: the number of students enrolled in each program; the number of students that graduate from the school each calendar year; the percentage of those that enroll that subsequently successfully graduate; the number students reporting employment in their field of study within 6 months of graduation; the number of students reporting employment in their field of student within 1 year of graduation.</p> <p>This section adds that students shall follow the established grievance process of the school and may contact SCHEV as a last resort to file a complaint about the school.</p> <p>This section adds that school must provide or make available to students, prospective students and other interested parties a catalog, bulletin or brochure containing, as a minimum: the number of students enrolled in each program; the number of students that graduate from the school each calendar year, the percent of those graduating out of the total number that enroll each year; the number of students reporting employment within 6 months and 1 year of graduation; and the name, location, and address of the main campus, branch or site operating in Virginia.</p> <p>This section allows public postsecondary schools originating outside of Virginia that has a branch operating in Virginia to be exempt from the surety instrument requirement.</p> <p>This section requires that new school and</p>

			<p>unaccredited existing school must complete at least two calendar years of academic instruction to qualify for the surety instrument waiver, instead of one year.</p> <p>This section add that library resources shall be current, well distributed among fields in which the institutions offers instructions, cataloged, logically organized and readily located. The school must maintain a continuous plan for library resource development and support. Career-technical school libraries are required to provide adequate and appropriate resources for completion of course work.</p> <p>This section expands the refund policy requiring accredited schools to follow the refund policy of their accrediting body and all other schools to follow SCHEV's refund policy. The policy allows for a nonrefundable fee not to exceed \$100; requires schools to provide a period of at least 3 business days during which a student can cancel enrollment without any financial obligation to the school, other than the nonrefundable fee; defines that a individual's status as a student can be terminated by the school no later than 7 consecutive instructional days after the last day on which the student attended the school; termination may be earlier if submitted in writing; require that parents or guardians of students under the age of 18 submit notices of termination; refunds must be submitted within 45 days of termination; institutions that provide the majority of their program offerings via distance learning must have a plan for student termination. Establishes refund policy for semester and quarter school; allows that expenses incurred by students for instructional supplies, tools, activities, library, rentals, service charges, deposits and all other charges represented separately to the student in the enrollment agreement not to be considered in tuition refund computations.</p>
<p>8 VAC 40-31-150</p>	<p>8 VAC 40-31-170</p>	<p>This section outlines requirement for initial certification.</p>	<p>The proposed change provides that certified schools can not enter into an agreement to deliver or develop courses or programs of study in Virginia with uncertified postsecondary schools. It stipulates that schools that submit their initial application for certification has 180 days to complete the process, after which time the application will be withdrawn and the school shall received a refund of their application fee minus a \$300</p>

			<p>non-refundable handling charge. In the event of a change of ownership, the new owner must certify within 45 business days of the transfer of ownership.</p> <p>This section establishes the certificate to operate expiration date for each school sector:</p> <p>Out-of-state private degree & career-technical schools – expire August 31 of each year.</p> <p>Out of state public institutions – expire September 14 of each year</p> <p>In-state private, non-profit institutions – expire September 30 of each year</p> <p>In-state proprietary degree granting & academic career-technical schools – expire October 14 of each year</p> <p>In-state career-technical schools (letters A – D) – expire October 31 of each year</p> <p>In-state career-technical schools (letters E-P) – expire November 14 of each year</p> <p>In-state career-technical schools (letters Q – Z and others) – expire November 30 of each year</p>
<p>8 VAC 40-31- 160</p>	<p>8 VAC – 40- 31-180</p>	<p>This section provides certification application requirements</p>	<p>The proposed change requires that unaccredited institutions must obtain candidacy status within 3 years of initial accreditation and full accreditation within 6 years to maintain eligibility for certification.</p> <p>It also establishes that unaccredited institutions that undergo a change of ownership during the plan of action to secure accreditation may remain on the plan of action timetable established by the original owner. No additional time for obtaining full accreditation will be granted due to a change of ownership.</p> <p>Schools must provide a complete listing of all sites, their address, phone number and classes taught there.</p> <p>New postsecondary school are required to submit an notarized statement from the President/CEO attesting to any previous involvement in the operation of a postsecondary school, or any previous</p>

			<p>involvement by any administrator, owner, controlling shareholder or members of the school's governing board.</p> <p>Schools must submit a complete listing of all diplomas, certificate or degree programs offered during their period of certification.</p> <p>Requires that a branch campus or site of a school under different ownership or different school names than the main campus must submit a separate application for certification and pay a separate fee.</p>
8 VAC 40-31-180	8 VAC 40-31-200	Provides guidance for audits.	Removes that Council's ability to refer audit findings to the Attorney General for consideration of imposition of criminal penalty.
8 VAC 40-31-210	8 VAC 40-31-230	Covers criminal prosecution for violations	The proposed change allows Council to take any action required by the Code of Virginia to deter illegal or improper acts, which may violate the requirements for school certification.
8 VAC 40-31-240	8 VAC 40-31-260	This section discusses fees.	<p>The proposed change established \$300 as a non-refundable handling fee for certification application processing.</p> <p>Eliminates Council authority to adjust fees as deemed necessary.</p>
8 VAC 40-31-260	8 VAC 40-31-280	This section provides guidance when a school closes.	The proposed change allows Council to seek advice from the Career College Advisory Board on matters related to school closures.
*	8 VAC 40-31-310	*	The proposed change includes information about the Student Tuition Guaranty Fund (STFG). Schools seeking initial certification after July 1, 2004 are not required to pay in to the fund. All other schools must follow provisions in place at the time of their initial certification. Institutions of higher education were not required to pay into the STGF
*	8 VAC 40-31-320	*	The proposed change establishes regulations for agents operating in Virginia. Agents representing non-certified accredited postsecondary schools must register with Council and pay a fee of \$300 per school represented. Agents representing unaccredited postsecondary school may not conduct business in Virginia. Agent permits expire on December 31 of each year. Renewal applications are due 60 days prior to the expiration date.

The following table details change from the current Emergency Regulations to the Proposed Regulations.

Current section number (Emergency)	Proposed new section number, if applicable	Current requirement (Emergency)	Proposed change and rationale
8VAC40-31-10. Definitions.	8VAC40-31-10. Definitions.	The section gives definitions of terms in the chapter.	<ul style="list-style-type: none"> • Definitions for “academic credit” and “academic vocational” are omitted. Definitions for “credit,” “credit hour,” and “unearned tuition” are added. • In the definitions for “branch,” “course registration material,” “full time faculty,” “instructional faculty,” and “part time faculty,” the term “institution” is replaced with -school-. • The definition of “certification” is changed so that it applies to –private or out of state postsecondary schools- and – certificate or diploma” programs as well as “institutions of higher education and/or degree program[s].” • The definition for “contact hour” (and now also -clock hour-) is changed to remove the reference to “the basic unit of attendance” and changes the applicable period from “50 minutes of scheduled instruction and/or examination” to –50 minutes of supervised or directed instruction and appropriate breaks-. • The definition for “diploma or certificate” is changed by deleting the following language: “applies only to those

Current section number (Emergency)	Proposed new section number, if applicable	Current requirement (Emergency)	Proposed change and rationale
			<p>awards given for coursework offered within Virginia by institutions of higher education which are appropriately approved to offer, either within the Commonwealth or outside the Commonwealth, degrees at the associate, baccalaureate, graduate, or professional level.”</p> <ul style="list-style-type: none"> • The definition of “in-state institution” is changed so that all out of state institutions rather than just those incorporated outside of Virginia may be considered as in-state institutions. • The definition of “postsecondary school” is corrected by adding the language “any entity offering” certain programs rather than by defining the school as the program itself. • In the definition of “proprietary”, “for-profit” is replaced with –profit making-.
8VAC40-31-20(C)&(E). Prohibited Acts.	8VAC40-31-20(C)&(E). Prohibited Acts.	These subsections prohibit institutions from representing that credits earned are applicable toward a degree except in accordance with this chapter and allow the council to refuse to certify misleading names of institutions.	The terms “institution” and “institution’s” have been replaced with -school- and -school’s-.
8VAC40-31-30. Advertisements, announcements, and other promotional	8VAC40-31-30. Advertisements, announcements, and other promotional	This section requires that “out of state schools” include certain information in its course registration materials and prohibits institutions from	The phrase “An out-of-state school” was replaced with -A school with its main campus not located in Virginia that has a physical presence in Virginia-.

Current section number (Emergency)	Proposed new section number, if applicable	Current requirement (Emergency)	Proposed change and rationale
materials.	materials.	representing in any material that they are supervised, endorsed, accredited, or recommended by any state agency.	The terms “institution” and “institution’s” were replaced with -school- and -schools-.
8VAC40-31-50. Religious Institutions.	8VAC40-31-50. Religious Institutions.	The section provides a limited time exemption to religious <i>institutions</i> subject to certain conditions.	All occurrences of the term “institution” are replaced with -school-. The last subsection “E” was re-titled -F-. The previous version had two subsection “E”s.
8VAC40-31-60. Institutions, programs, degrees, diplomas, & certificates exempt by council action.	8VAC40-31-60. Schools, programs, degrees, diplomas, & certificates exempt by council action.	The section provides 11 specific exemptions from certification for institutions for certain types of programs and degrees.	The term “institution” was replaced by -school- wherever it appeared in the specific exemptions. The exemption (5) for professional programs was expanded to include programs subject to approval by any state or federal agency or if the school is not seeking degree-granting status. The exemption (8) for postsecondary courses provided on a contractual basis with no charge for tuition is narrowed so that only schools that are accredited by some accrediting entity recognized by the U.S. Department of Education are exempt.
8VAC-40-31-70. Denial of exemption; Appeal of action.	8VAC-40-31-70. Denial of exemption; appeal of action.	The section provides the right to a hearing for an <i>institution</i> if the council denies a request for an exemption.	The term “institution” is replaced with -school-.
8VAC40-31-80. Role of the Council.	8VAC40-31-80. Role of the Council.	The section defines the role of the council and makes reference “§ 23-276.1 through § 23-276.12.”	The code reference is changed to -§ 23-276.1 et seq.-
8VAC40-31-90. Role of the Executive Director.	8VAC40-31-90. Role of the Executive Director.	The section defines some administrative responsibilities of the executive director. The section uses the term “institution.”	All occurrences of the term “institution” are replaced with -school-. Identification of the first subsection as “A” removed as there was only one subsection.
8VAC40-31-100. Role of the Council Staff.	8VAC40-31-100. Role of the Council Staff.	The section defines the role of the council staff. The section uses the term “institution” and makes reference to “§ 23-276.1 through § 23-276.12.”	All occurrences of the term “institution” are replaced with -school-. Identification of the first subsection as “A” removed as there was only one subsection. The code reference is changed to -§ 23-276.1 et seq.- The

Current section number (Emergency)	Proposed new section number, if applicable	Current requirement (Emergency)	Proposed change and rationale
			superfluous language “and chapter” was deleted.
8VAC40-31-110. Certain existing approvals & exemptions continued.	8VAC40-31-110. Certain existing approvals & exemptions continued.	The section allows <i>institutions of higher education</i> with existing approvals to confer degrees to continue to confer degrees unless that approval is revoked.	In subsection B, the phrase “institution of higher education” is shortened to –institution-. There is no change in meaning since the terms have identical definitions per 8VAC40-31-10.
8VAC40-31-120. Certification required for new and existing postsecondary schools.	8VAC40-31-120. Certification required for new and existing postsecondary schools.	The section requires new and existing postsecondary schools to be certified prior to engaging in covered activities whether by telecommunications or at a site in Virginia.	The new section adds –mail correspondence courses- to the types of courses requiring certification.
8VAC40-31-140. Certification criteria for institutions of higher education.	8VAC40-31-140. Certification criteria for institutions of higher education.	The section sets certification criteria for institutions of higher education including the percentage of general education courses required for each level of degree. It also requires instructors to hold a degree of a certain level depending on the level of the course taught or to have experience.	The new section increases the required percentage of general education courses at the Associate of Occupational Science level from 10% to 15%. The new section requires that required instructor degrees to be: -from an accredited college or university-.
8VAC40-31-150. Certification criteria for vocational schools.	8VAC40-31-150. Certification criteria for vocational schools.	The section sets certification criteria for vocational schools including curricular requirements and requires that instructors hold associate degrees or have experience.	The new sections require that the associate degree required for instructors be -related to the area of instruction-.
8VAC40-31-160. Certification criteria for all postsecondary schools.	8VAC40-31-160. Certification criteria for all postsecondary schools.	The section sets certification criteria for all postsecondary schools including requirements for (A) a written comprehensive statement with 6 specific elements, (B) a written document describing the powers and duties of the board, officers, administrators and students, (C) a written policy defining admissions requirements with 4 specific elements, (D) maintenance of student records, (E) a catalog or brochure with 11 specific elements, (F) a process for determining curricula, (G) documentation of financial soundness, (H) maintenance of a surety instrument, (I) a written policy for faculty	5 elements relating to enrollment, graduation, and employment are added to statement of subsection (A). 1 element relating to grievances is added to the policy document of subsection (C) and the schools are required to provide the document to all applicants. Subsection (D) is amended to define a 5-year retention period for student records. Also, subsection (D) is amended so that state supported public schools may enter into agreement with the university system of which they are a part for the purpose of maintaining student records in the event of closure or revocation of certification. (Schools that do

Current section number (Emergency)	Proposed new section number, if applicable	Current requirement (Emergency)	Proposed change and rationale
		<p>accessibility, (J) accuracy of information, (K) quality of non-residential programs, (L) a library, and (M) a tuition refund policy.</p>	<p>not fit this exception must contract with another school with whom they are not corporately connected. 4 elements are added to the catalog of subsection (E) regarding the number of students enrolled, the number that graduate, and the corresponding graduation percentage, and accurate information regarding the transferability of diplomas or certificates. The existing financial aid element of subsection (E) is expanded to include the percentage of students receiving federal aid and the average student debt at graduation. The existing placement and employment element of subsection (E) is expanded to include the number of students reporting employment in their field of study at 6 months and 1 year after graduation. The citation in subsection (I) to USDE stability requirements is corrected to § 160.H from § 140.I. The surety instrument requirement of subsection (H) is amended to provide an exemption to “public postsecondary schools originating in another state and have a branch or site in Virginia. The tuition refund policy requirement of subsection (M) is amended to require adherence to the tuition refund requirements of their accrediting body if required. The tuition refund policy requirement is amendment of subsection (M) is amended to require full refund (minus a nonrefundable portion) of tuition if the student withdraws or is dismissed prior to the start of the program. The tuition refund policy requirement of subsection (M) is amended to require that institutions providing a majority of their programs</p>

Current section number (Emergency)	Proposed new section number, if applicable	Current requirement (Emergency)	Proposed change and rationale
			through distance learning have a plan for student termination which is provided to SCHEV for review with annual certification or recertification applications. In several of the subsections of this section, the term "institution" has been replaced with -school-.
8VAC40-31-170. Initial certification.	8VAC40-31-170. Initial certification.	The section prohibits institutions from using of the term "college" or "university" without acknowledgment from SCHEV that the name does not violate regulations. The section requires schools to notify SCHEV of proposed name prior to submission to the State Corporation Commission (SCC) and requires that institutions have authorization from the SCC to transact business in Virginia prior to certification. The section prohibits operation of institutions in Virginia without certification, and prohibits certified institutions from entering into agreements with uncertified institutions. The section details certification expiration dates and recertification deadlines for the various types of institutions. The section requires recertification of an institution when there is a change of ownership.	The term "institution" is replaced with –school- in several subsections. A requirement is added that schools complete the application process within 180 days or the council will withdraw the application, and the application fee will be refunded minus a handling charge of \$300.
8VAC40-31-180. Application requirements.	8VAC40-31-180. Application requirements.	The section sets requirements for the information that must be included in an application including a completed form, a statement of accreditation status, a copy of the transacted surety instrument form, a checklist and notarized	The term "institution" is replaced with –school- in several subsections. The requirement that "For out-of-state institutions, a copy of the institution's authorization to operate from the state agency in which its main campus is domiciled" has

Current section number (Emergency)	Proposed new section number, if applicable	Current requirement (Emergency)	Proposed change and rationale
		statement acknowledging compliance with certification criteria, a company check, a copy of the institutions certificate from the SCC, a copy of an out of state school's authorization to operate in the state where its main campus is located, a listing of all sites with contact information, a statement setting forth the involvement of any member of the school's board in the operation of another postsecondary school, a list of all diploma or certificate programs offered, and evidence of a valid business license.	been modified to apply to - schools whose main campus is not in Virginia- rather than only out-of-state schools. The requirement to provide a statement setting forth board members' involvement in other postsecondary schools has been expanded to include disclosure of any criminal convictions or civil penalties levied by a legal entity against any school they were affiliated with. The requirement to list all diploma or certificate programs is expanded for renewing schools to include the number of degrees of each type awarded, the number of students graduating and the number enrolled, and follow-up employment information from graduates. The section adds a new requirement that when a branch campus or site is under different ownership or has a different name than the main campus, the branch or site must apply for certification and pay the certification fee.
8VAC40-31-190. Withdrawal of application by a postsecondary school.	8VAC40-31-190. Withdrawal of application by a postsecondary school.	The section allows withdrawal of any application for certification by an institution without prejudice at any time and file a new one.	The term "institution" was replaced with –school-.
8VAC40-31-200. Audit requirements.	8VAC40-31-200. Audit requirements.	The section requires periodic audits of institutions, sets the composition of the audit committee, defines triggers for audit, requires a report, and lists action that the council may take based on the findings of the report.	The term "institution" was replaced with –school-.
8VAC40-31-220. Procedural rules for the conduct of fact-finding conferences and hearings (§ 2.2-4019 thru 2.2-4030 of the Code of Virginia).	8VAC40-31-220. Procedural rules for the conduct of fact-finding conferences and hearings (§ 2.2-4019 thru 2.2-4030 of the Code of Virginia).	The section requires that no certification can be denied, suspended, or revoked without notice of the proposed action and the time and place of a hearing. The section provides for formal and informal conferences and sets requirements for appearance and conduct. The section also	The term "institution" was replaced with –school-.

Current section number (Emergency)	Proposed new section number, if applicable	Current requirement (Emergency)	Proposed change and rationale
		requires a written statement and recommendation to be prepared and that the council render a decision based on the recommendation.	
8VAC40-31-240. Civil enforcement.	8VAC40-31-240. Civil enforcement.	The section allows the council to seek an injunction against schools violating the regulations regardless of any remedy available at law.	The term "institution" was replaced with –school-.
8VAC40-31-260. Fees.	8VAC40-31-260. Fees.	The section specifies the location of fee amounts, where they are deposited; that they are non-refundable, and that they must be by company check payable to the Treasurer of Virginia.	The nonrefundable "reasonable handling charge" associated with the withdrawal of an application is specified to be \$300.
8VAC40-31-270. Receipt of applications, correspondence and other materials.	8VAC40-31-270. Receipt of applications, correspondence and other materials.	The section specifies the mailing address for correspondence and states that mailing of items does not constitute receipt by SCHEV unless sent by registered or certified mail, return receipt requested.	The address is modified from "ATTN: Institutional Certification" to –ATTN: Private and Out of State Postsecondary School Certification-.
8VAC40-31-280. Closure of a postsecondary school.	8VAC40-31-280. Closure of a postsecondary school.	The section allows the council to allow a school whose application has been denied or revoked to continue to offer programs to current students to complete their programs. It specifies a school's duties when it ceases operation voluntarily.	The term "institution" was replaced with –school-.
8VAC40-31-290. Waiver by council	8VAC40-31-290. Waiver by council	The section allows the council to waive certification requirements for accredited institutions.	The term "institution" was replaced with –school-.
8VAC40-31-300. Freedom of Information Act to apply.	8VAC40-31-300. Freedom of Information Act to apply.	The section says that all application materials submitted by a school are subject to FOIA.	The term "institution" was replaced with –school-.
8VAC40-31-310. Student Tuition Guaranty Fund (proprietary schools only).	8VAC40-31-310. Student Tuition Guaranty Fund.	The section requires the Executive Director to appoint a Director of the Fund, provides the purpose of the Fund, provides exemptions to schools seeking initial certification after July 1, 2004, defines timeliness of claims against the fund, gives the director investigatory authority	The term "institution" was replaced with –school-. The words "(proprietary schools only)" are deleted from the sections title.

